

BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reduction of
Penalty or Early Termination of Probation:

GREGORY L. TOM,

Optometrist License No. 10427

Petitioner.

Case No. CC 2013-47

OAH No. 2015010052

DECISION

This matter was heard before a quorum of the California Board of Optometry (the Board), Department of Consumer Affairs, State of California, in Van Nuys, California, on January 23, 2015.

Matthew Goldsby, Administrative Law Judge, Office of Administrative Hearings, presided over the hearing.

Petitioner Gregory L. Tom appeared and represented himself.

Deputy Attorney General Sydney Mehringer appeared on behalf of the Office of the Attorney General, State of California.

The petitioner's evidence and the arguments and observations of the Deputy Attorney General were presented in open session. Board members had the opportunity to ask questions to assist in their deliberations. Additionally, Board members read and considered the petition and exhibits filed by the petitioner. At the conclusion of the open hearing on the petition, the Board met in closed session to deliberate and to vote on whether to approve the petition.

The matter was submitted at the conclusion of the hearing.

FACTUAL FINDINGS

1. On September 22, 1994, the Board issued Optometry License number 10427 to the petitioner.

2. In 2001 and 2002, the petitioner submitted bills to Vision Service Plan (VSP) for payment as an authorized service provider. After VSP conducted an audit, the insurance carrier determined that the petitioner had submitted fraudulent or improper bills totaling \$84,829.53.

3. On March 26, 2007, while acting in her official capacity, Taryn Smith (the complainant), as executive officer of the Board, brought an Accusation against the petitioner. The petitioner stipulated to the surrender of his license and, without making any specific admission, agreed that there was a factual basis for the imposition of discipline.

4. On April 3, 2008, the Board adopted the Stipulated Surrender of License and Order. Costs were awarded to the Board in the amount of \$11,284.57.

5. Thereafter, the petitioner filed a petition for reinstatement of his license. At the hearing on his petition, the petitioner appeared before the Board and testified on his own behalf. He presented evidence of paying partial restitution to the insurance carrier and character references from a probation monitor.

6. On June 15, 2009, the Board granted the petition for reinstatement. The petitioner's license was reinstated and immediately revoked, with the revocation stayed and the license placed on probation for five years.

7. On November 19, 2010, the petitioner filed a Petition for the Reduction of Penalty or Early Termination of Probation. At the hearing on his petition, the petitioner appeared before the Board and testified again on his own behalf. However, the evidence showed that the petitioner had failed to comply with the previous terms of probation. The petitioner performed optometry services at a local college for compensation without reporting the work to the Board. He was also not supervised by another optometrist as required by the terms of probation. After being admonished for the violation, the petitioner wrote a check to reimburse the college the compensation he had received. On the face of the reimbursement check, the petitioner inserted the memo "donation." The Board denied the petition based on (1) the claimant's failure to comply with previously imposed terms of probation and (2) the Board's concern that the petitioner was attempting to derive a tax benefit when he reimbursed the college.

8. On August 18, 2011, the complainant filed a Petition to Revoke Probation on six grounds of probation violations. On August 29, 2012, the petition was granted, the stay of revocation was lifted and the prior order of revocation was imposed.

9. Thereafter, the petitioner filed a Petition for Reinstatement of his license. On November 12, 2013, the Board granted the petition based on the petitioner's evidence, including his testimony. A license was issued to the petitioner and immediately revoked, with the revocation stayed and the license was placed on probation for five years, beginning December 11, 2013.

10. Beginning in January 2014, the petitioner commenced work under the supervision of a licensed optometrist. He is assigned clinical work and examines patients, but

he handles no administrative or billing tasks. The petitioner has performed to the satisfaction of his monitor and patients. The petitioner has been unable to secure other employment because of his probationary status.

11. The petitioner and his monitor have filed quarterly reports with the Board. The petitioner has donated time to serve communities without insurance or other resources for eye care. He teaches life skills to children and volunteers as a coach. He has completed continuing education courses in law and ethics.

12. On December 12, 2014, the petitioner filed his second Petition for the Reduction of Penalty or Early Termination of Probation. At the hearing on his petition, the petitioner appeared before the Board and testified that he had learned from his mistakes and that he was extremely remorseful. However, this testimony was identical in content and tone as the testimony given in prior hearings, and yet the petitioner's conduct failed to comport with those prior assurances. Accordingly, the petitioner's testimony is unreliable and not credited.

LEGAL CONCLUSIONS

1. Cause does not exist to grant the Petition for Penalty Reduction or Early Termination of Probation pursuant to Government Code section 11522 because the petitioner has not demonstrated that he is rehabilitated from his prior acts and offenses under the criteria of California Code of Regulations, title 16, section 1516. (Factual Findings, paragraphs 1 through 10; Legal Conclusions, paragraphs 2 through 6.)

2. Government Code section 11522 provides that a person whose license has been revoked or suspended may petition the agency for a reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition.

3. Business and Professions Code section 3091, subdivision (b), authorizes the Board, on the petition of a licensee, to modify or terminate the terms and conditions imposed on the probationary license.

4. The petitioner bears the burden of establishing his fitness for early termination of probation. (Evid. Code, § 500.) In a proceeding to restore a revoked or surrendered license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392.) An individual seeking reinstatement must present strong proof of rehabilitation, which must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence to a reasonable certainty. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) While the petitioner is seeking termination of probation, the principles and standards set forth in the cited cases dealing with reinstatement of a license would logically apply to a petition for early termination of probation.

5. When considering a petition for reinstatement under Government Code section 11522, the Board must evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:¹

- (A) The nature and severity of the acts or offenses.
- (B) The petitioner's total criminal record.
- (C) The time that has elapsed since commission of the acts or offenses.
- (D) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the petitioner.
- (E) If applicable, evidence of expungement proceedings pursuant to Penal Code section 1203.4.
- (F) Evidence, if any, of rehabilitation submitted by the petitioner.


6. The petitioner has committed multiple acts involving dishonesty. He submitted fraudulent or improper bills to VSP. He thereafter engaged in the unsupervised practice of optometry withholding notification to the Board in violation of the terms of his probation. He has substantial history of disciplinary action and his successful completion of the first year of a five-year probationary term is insufficient to evaluate or anticipate the petitioner's rehabilitation. The evidence is neither clear nor convincing that the petitioner is fit to engage in the practice of optometry without Board oversight. The public will be served only by the petitioner's satisfactory compliance with all terms of probation as previously ordered.

ORDER

The petition of Gregory L. Tom is denied. The terms of probation remain in full force and effect.

ORDERED: March 23, 2015

EFFECTIVE: April 22, 2015


Alejandro Arredondo, O.D., President
California Board of Optometry
Department of Consumer Affairs

¹ California Code of Regulations, title 16, section 1516, subdivisions (b) and (c).

BEFORE THE BOARD OF
OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of License of:

Gregory Lawrence Tom

Optometrist License No. 10427

Respondent.

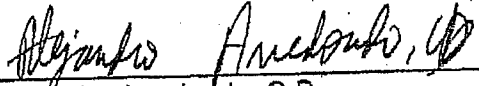
Case No. CC 2013-47

OAH No. 2013080607

ORDER DENYING PETITION FOR RECONSIDERATION

The Board of Optometry, having considered Respondent's
November 28, 2013 letter as a Petition for Reconsideration in the above-entitled
matter and determining that good cause for the granting of reconsideration has not
been established, hereby denies the granting of the Petition.

IT IS SO ORDERED this 10th day of December, 2013.


Alejandro Arredondo, O.D.
President
California State Board of Optometry

BEFORE THE BOARD OF
OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition
for Reinstatement of:

OAH No. 2013080607

GREGORY TOM,

Optometrist License No. 10427,

Petitioner.

Agency Case No. CC 2013-47

DECISION

A quorum of the Board of Optometry (Board) heard this matter on September 13, 2013, in Pomona, California. Board member Donna Burke was present, but did not participate in the hearing or deliberations; she recused herself from this matter.

Chris Ruiz, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Gregory Tom (Petitioner) represented himself.

Sydney Mehringer, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522. Jessica Sieferman, the Board's Enforcement staff, was also present during the proceedings.

The parties submitted the matter for decision, and the Board decided the case in executive session on September 13, 2013.

FACTUAL FINDINGS

1. On May 1, 2013, Petitioner filed a Petition for Reinstatement.
2. The Board issued optometrist license number 10427 to Petitioner on or about September 22, 1994.
3. In March 2007, the California Attorney General's Office filed an accusation against Petitioner alleging that from 2001 through 2006, Petitioner fraudulently submitted

bills to insurance provider Vision Services Plan totaling approximately \$80,000, and altered patient medical records.

4. In a Stipulated Surrender of License and Order, effective April 3, 2008, Petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and the alteration of medical records; he surrendered his optometrist license.

5. Petitioner filed a Petition for Reinstatement of his optometrist license on February 23, 2009. The Board considered his petition on May 15, 2009, and in a Decision, effective July 15, 2009, the Board agreed to grant his petition. The Board reinstated Petitioner's optometrist license, effective January 1, 2010, immediately revoked it, stayed the revocation, and placed the license on five years probation with various terms and conditions.

6. Petitioner's probationary terms and conditions included, among others, being restricted to supervised employment by a Board-approved optometrist or ophthalmologist, prior to commencing employment (term and condition 2); and requiring Petitioner to inform the Board in writing of any change of place of practice within 15 days (term and condition 3).

7. In November 2010, Petitioner filed a Petition for Reduction of Penalty or Early Termination of Probation. Petitioner sought the early termination of his five-year probation. He contended it was appropriate to end his probation early because he was sufficiently rehabilitated from the earlier transgressions he committed. By Decision and Order, that Petition was denied effective August 16, 2011. Petitioner's Petition for Reconsideration filed thereafter was denied on September 20, 2011.

8. At a probation meeting in May 2011, Petitioner admitted that he had worked at three colleges between January 25 and 30, 2010. Petitioner asserted that he volunteered his services, but he was paid a stipend by the colleges and the student patients paid cash for their glasses. Petitioner contracted with the colleges under the business name of "Advanced Optometric Eyecare." According to the California Secretary of State, Advanced Optometric Eyecare is an active business with Petitioner as the agent for service. Petitioner used the tax identification number for this entity when contracting with the three colleges. His stipend ranged from approximately \$315 to \$350 for each day. Petitioner did not notify the Board before engaging in this work. He was not supervised by another optometrist. These activities by Petitioner violated Terms and Conditions numbers 2 and 3 of his probation. Petitioner explained that once he understood this was a violation of his probation, he issued personal checks to each college paying amounts greater than what he was paid. On each check, Petitioner wrote, "donation." This notation gave the Board concern that Petitioner sought to use these reimbursements as personal tax benefits, although when asked at hearing, Petitioner asserted he would not do so.

9. On August 18, 2011, the Board filed a Petition to Revoke Probation. By Decision and Order, effective August 29, 2012, Petitioner's license was revoked. On August 27, 2012, Petitioner filed a Petition for Reconsideration which was denied.

10. In his current Petition, Petitioner asserted that he has changed his mentality and learned from his mistakes since his license has been revoked. He described himself as a changed person and that the year since his license has been revoked has been a "long time." He explained how his revocation has caused his family financial and emotional hardship. Petitioner feels ashamed when he has to inform family members that he is unable to handle their optometric needs.

11. Petitioner offered the testimony of Radbert Chin, O.D., his prior employer, and James Young, O.D., Petitioner's monitor when Petitioner was on probation. Both support Petitioner once again becoming licensed. Additionally, Petitioner offered a letter from Superior Court Judge Braden C. Woods (Judge Woods), County of San Francisco. Judge Woods opinion is that reinstatement of Petitioner's license would not pose a threat to the public. Judge Woods believes that Petitioner's license should be reinstated and that if Petitioner were licensed it would be a benefit to the community.

12. After considering the Petition, all of its exhibits, the testimony of Petitioner and the other witness, the Board concluded that Petitioner has established that the Petition should be granted, with terms and conditions.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists to grant Petitioner's Petition for Reinstatement pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-12.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Government Code section 11522 states in pertinent part:

"A person whose license has been revoked or suspended may petition the agency for reinstatement . . . after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement."

4. California Code of Regulations, title 16, section 1516, states in pertinent part:

[¶] ... [¶]

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

5. Petitioner established, by clear and convincing evidence to a reasonable certainty, that his license should be reinstated. The public will be protected by issuing Petitioner a probationary license. The probationary license will include terms and conditions to protect the public.

ORDER.

Petitioner Gregory L. Tom's Petition for Reinstatement of licensure is hereby granted. A license shall be issued to Petitioner. Said license shall immediately be revoked, the order of revocation stayed and Petitioner's license placed on probation for a period of 5 years with the below stated terms and conditions. Petitioner will be hereinafter referred to as "Respondent" in the terms and conditions stated below.

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order and all other applicants thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. OBEY ALL LAWS

Respondent shall obey all federal, state, and local laws, governing the practice of optometry in California.

Respondent shall notify the Board in writing within 72 hours of any incident resulting in his/her arrest, or charges filed against, or a citation issued against Respondent.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

2. QUARTERLY REPORTS

Respondent shall file quarterly reports of compliance under penalty of perjury to the probation monitor assigned by the Board. Quarterly report forms will be provided by the Board (DG-QR1 (05/2012)). Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's optometrist license. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation throughout the entire length of probation as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

3. COOPERATE WITH PROBATION MONITORING PROGRAM

Respondent shall comply with the requirements of the Board's probation monitoring program, and shall, upon reasonable request, report or personally appear as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent is encouraged to contact the Board's probation monitoring program representative at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and may result in the filing of an accusation and/or a petition to revoke probation against Respondent's Optometrist license.

4. PROBATION MONITORING COSTS

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board of Optometry and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead, to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the optometrist license will not be renewed, until such time as all probation monitoring costs have been paid.

5. FUNCTION AS AN OPTOMETRIST

Respondent shall function as an optometrist for a minimum of 60 hours per month for the entire term of his/her probation period. Respondent shall only work as a supervised employee in his capacity as an optometrist.

6. NOTICE TO EMPLOYER

Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone number of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 calendar days from each change in a supervisor or director.

The Respondent must ensure that the Board receives written confirmation from the employer that he/she is aware of the Discipline, on forms to be provided to the Respondent (DG-Form 1 (05/2012)). The Respondent must ensure that all reports completed by the employer are submitted from the employer directly to the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed.

7. CHANGES OF EMPLOYMENT OR RESIDENCE

Respondent shall notify the Board, and appointed probation monitor in writing, of any and all changes of employment, location, and address within 14 calendar days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 calendar days. P.O. Boxes are accepted for mailing purposes; however the Respondent must also provide his/her physical residence address as well.

8. COST RECOVERY

Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ 0 and shall be paid in full directly to the Board, in a Board-approved payment plan, within 6 months before the end of the Probation term. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs, including payment amount(s). Supporting

documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

9. TAKE AND PASS CALIFORNIA LAWS AND REGULATIONS EXAMINATION

Within 60 calendar days of the effective date of this decision, or within some other time as prescribed in writing by the Board, Respondent shall take and pass the California Laws and Regulations Examination (CLRE). If Respondent fails this examination, Respondent must take and pass a re-examination as approved by the Board. The waiting period between repeat examinations shall be at six-month intervals until success is achieved. Respondent shall pay the established examination fees.

If Respondent fails the first examination, Respondent shall immediately cease the practice of optometry until the re-examination has been successfully passed; as evidenced by written notice to Respondent from the Board.

If Respondent has not taken and passed the examination within six months from the effective date of this decision, Respondent shall be considered to be in violation of probation.

10. COMMUNITY SERVICES

All types of community services shall be at the Board's discretion, depending on the violation. Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program in which Respondent provides free non-optometric or professional optometric services on a regular basis to a community or charitable facility or agency, amounting to a minimum of (to be determined by Board) (Ex: 20) hours per month of probation. Such services shall begin no later than 15 calendar days after Respondent is notified of the approved program.

11. VALID LICENSE STATUS

Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

12. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE

Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel outside of

California for more than 30 calendar days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 calendar days, upon his/her return to California and prior to the commencement of any employment where representation as an optometrist is/was provided.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California total two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing in another state of the United States and is on active probation with the licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

13. LICENSE SURRENDER

During Respondent's term of probation, if he/she ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy any condition of probation, Respondent may surrender his/her license to the Board. The Board reserves the right to evaluate Respondent's request and exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation. All costs incurred (i.e., Cost Recovery and Probation Monitoring) are due upon reinstatement.

Surrender of Respondent's license shall be considered a Disciplinary Action and shall become a part of Respondent's license history with the Board.

14. VIOLATION OF PROBATION

If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of discipline shall be considered while there is an accusation or petition to revoke probation or other discipline pending against Respondent.

15. COMPLETION OF PROBATION

Upon successful completion of probation, Respondent's license shall be fully restored.

16. SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE

If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records. Respondent shall also ensure that patients are refunded money for work/services not completed or provided, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of optometry by the Respondent during any period of license suspension.

17. WORKSITE MONITOR

Within 30 calendar days of the effective date of this decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of an optometrist or board certified ophthalmologist, and a plan of practice in which Respondent's practice shall be monitored by the approved worksite monitor. The worksite monitor's license scope of practice shall include the scope of practice of the Respondent that is being monitored. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years. The worksite monitor shall not have any financial, personal, or familial relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee. Any cost for such monitoring shall be paid by Respondent.

The Board or its designee shall provide the approved worksite monitor with copies of the decision(s) and accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the decision(s), accusation(s), and proposed monitoring plan, the worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order, fully understands the role of worksite monitor, and agrees or disagrees with the proposed monitoring plan set forth by the Board. If the worksite monitor disagrees with the proposed monitoring plan, the worksite monitor shall submit a revised worksite monitoring plan with the signed affirmation for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved worksite monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the worksite monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, Respondent shall receive a notification from the Board or its designees to cease the practice of optometry within three (3) calendar days after being so notified. Respondent shall cease practice until a worksite monitor is approved to provide worksite monitoring responsibility.

The worksite monitor must adhere at a minimum, to the following required methods of monitoring the Respondent:

- a) Have face-to-face contact with the Respondent in the work environment on a frequent basis as determined by the Board, at least once per week.
- b) Interview other staff in the office regarding the Respondent's behavior, if applicable.
- c) Review the Respondent's work attendance.

The Respondent shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

The worksite monitor must submit quarterly reports documenting the Respondent's work performance. Reports are due for each year of probation and the entire length of probation from the worksite monitor as follows:

- For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.
- For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.
- For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.
- For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

The quarterly report shall include, but not be limited to:

1. the Respondent's name;
2. license number;
3. worksite monitor's name and signature;
4. worksite monitor's license number;
5. worksite location(s);
6. dates Respondent had face-to-face contact or correspondence (written and verbal) with monitor;
7. staff interviewed, if applicable;
8. attendance report;
9. any change in behavior and/or personal habits;
10. assessment of the Respondent's ability to practice safely;
11. recommendation defendant on Respondent's performance on whether to continue with current worksite monitor plan or modify the plan;
12. other relevant information deemed necessary by the worksite monitor or the Board.

Respondent is ultimately responsible for ensuring his/her worksite monitor submits complete and timely reports. Failure to ensure his/her worksite monitor submits complete and timely reports shall constitute a violation of probation.

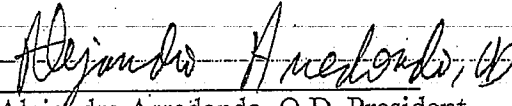
If the monitor resigns or is no longer available, Respondent shall, within five (5) calendar days of such resignation or unavailability, submit in writing to the Board or its designee, for prior approval, the name and qualifications of a replacement worksite monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of optometry within three (3) calendar days. After being so notified, Respondent shall cease practice until a replacement monitor is approved and assumes monitoring responsibility.

18. ETHICS CLASS

Respondent is required to take an ethics class, as approved by the Board, during each year of his probation, for a total of five classes.

Ordered: November 12, 2013

Effective: December 11, 2013


Alejandro Arredondo, O.D. President
California Board of Optometry
Department of Consumer Affairs

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

GREGORY LAWRENCE TOM

Optometrist License No. 10427

Case No. DC 2008-225

OAH No. 2011080850

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied. Accordingly, the Decision shall remain effective on August 29, 2012.

IT IS SO ORDERED this 29th day of August, 2012.

Alejandro M. Arredondo, D
ALEJANDRO M. ARREDONDO,

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

Case No. 2003-125

OAH No. 2011080850

GREGORY LAWRENCE TOM
63 W. Angela St.
Pleasanton, CA 94566

Optometry License No. 10427

Respondent

DECISION AND ORDER

The attached Proposed Decision is hereby adopted by the State Board of
Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 29, 2012.

It is so ORDERED July 30, 2012.

Alejandro Hernandez, OD

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

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FILED
CLERK

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

GREGORY LAWRENCE TOM, O.D.,
Optometry License No. 10427,

Respondent.

Case No. 2003-125

OA# No. 2011110025

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on May 10 and 31, 2012, in Oakland, California.

Deputy Attorney General Char Sachson represented Mona Maggio, Executive Officer of the State Board of Optometry.

Craig S. Steinberg, O.D., Attorney at Law, represented respondent Gregory Lawrence Tom, O.D., who was present throughout the proceeding.

The record was left open until June 4, 2012, for complainant to submit a response to respondent's Hearing Brief (Ex. K.). Complainant did not file a response. The record was closed and the matter was submitted for decision on June 4, 2012.

SUMMARY

Following the filing of an accusation against him, and pursuant to a Stipulated Surrender and Order, respondent surrendered his optometry license effective April 3, 2008. Thereafter respondent petitioned the board to reinstate his license, which was granted effective July 15, 2009. The license was reinstated on probation to the board for five years on stated terms and conditions. In this proceeding, complainant seeks to revoke respondent's probation for his failure to comply with six conditions of his probation.

FACTUAL FINDINGS

1. On September 22, 1994, the State Board of Optometry issued Optometrist License No. 10427 to respondent Gregory L. Tom. The license was surrendered effective April 3, 2008, in connection with disciplinary proceedings in Case No. 2003-125. The license was reinstated on probation effective July 15, 2009. The license was in full force and effect during all times relevant to this proceeding. It will expire, unless renewed, on July 31, 2012.

2. On January 13, 1995, the board issued to respondent Fictitious Name Permit No. 2081 ("20/20 Optometry," San Ramon). The permit expired April 14, 2003, and has not been renewed.

3. On May 11, 1995, the board issued to respondent Branch Office License No. 4052. The license was cancelled on April 14, 2003.

4. On May 31, 1995, the board issued to respondent Fictitious Name Permit No. 2155. The permit expired April 14, 2003, and has not been renewed.

5. On June 15, 2001, the board issued to respondent Branch Office License No. 6275. The license expired on February 1, 2004, and has not been renewed.

6. On October 18, 2001, the board issued to respondent Fictitious Name Permit No. 2858 ("20/20 Optometry of Silicon Valley," San Jose). The permit expired on January 31, 2004, and has not been renewed.

Prior Discipline/License Surrender

7. In the prior disciplinary action respondent surrendered his license effective April 3, 2010. The discipline was based on a stipulated Surrender of License and Order in which respondent agreed that there was a factual basis for imposition of discipline based on the allegations in the accusation that he had committed insurance fraud, altered patient records, and made false representation of facts in his optometry practice. In particular, it was alleged, based on an audit of his billings conducted by Vision Service Plan (VSP), that respondent had fraudulently billed VSP, and received payment, in the amount of \$84,929.53 over a multiple-year period. Respondent agreed that in the event he were to petition the board to reinstate the license, all the allegations and charges set forth in the accusation would be deemed to be true, correct, and admitted by him. Respondent was ordered to pay the board its costs of investigation and enforcement of \$11,284.57 prior to reinstatement of the license. And, under the terms of the agreement, respondent agreed to wait one year after the effective date of the decision before applying for reinstatement.

License Reinstatement on Probation

8. Respondent filed a petition to reinstate his license on February 23, 2009. Although the petition was filed one month early, the board agreed to consider the petition. Among the evidence he presented to the board was evidence of payment of \$75,460 in restitution to VSP. The board found that respondent had demonstrated sufficient rehabilitation to warrant his reinstatement on probation. The board commented:

Petitioner showed a sincere change in attitude and acceptance of responsibility. He submitted evidence of partial restitution. Because of his family support, similar misconduct is not likely to be repeated. The evidence also showed that the public would benefit from Petitioner's medical talent. Conversely, petitioner committed serious misconduct by defrauding insurance provider VSP and altering his patient's medical records, and only one year has passed since the effective date of petitioner's license surrender. Because of the relatively short time since the conduct and the surrender of the license, petitioner must wait an additional period of time before the license is actually reinstated.

Although the effective date of the decision granting respondent's petition for reinstatement was July 15, 2009, the actual reinstatement of his license did not take place until January 1, 2010. The board ordered the reinstated license immediately revoked, stayed the revocation, and placed the license on probation for five years. Among the terms and conditions of probation imposed by the board were Restricted Practice, Reporting, Cooperate with Probation Surveillance, Monitoring, Maintain Records, Community Service, Payment of Costs, and Restitution. In addition, Probation Condition 12 provided that if respondent violated the conditions of his probation, the board may, after giving respondent notice and an opportunity to be heard, set aside the stay order and impose the revocation of respondent's license.

9. Respondent has had two probation monitors. His initial monitor was Margie McGavin. Jessica Siefertman assumed McGavin's caseload in February 2010. Respondent cooperated with both probation monitors, and he communicated with them regularly.

10. With the approval of Probation Monitor McGowan, respondent resumed working as an optometrist in January 2010 under the supervision of Radbirt Jonas Chin, O.D., at VisionOne Optometry in Pleasanton. Respondent worked for Dr. Chin on a part-time basis. Dr. Chin has been satisfied with respondent's performance.

11. Probation Monitor McGowan apparently approved Professor Robert B. DiMartino, O.D., M.S., as respondent's practice monitor. Dr. DiMartino did not submit any probation monitoring reports. The only document Dr. DiMartino provided of his monitoring of respondent, which he called "mentoring," is contained in a letter he wrote directly to board president Lee Goldstein, O.D., dated May 15, 2011. Respondent has a new practice monitor as of August 2011.

12. Respondent complied with all probation requirements associated with payment of cost recovery. Respondent exceeded the requirements for community service and for continuing education. Respondent has been active in a program called First Tee. He also volunteers at schools and at senior homes. At his most recent compliance meeting, no new violations were identified.

Petition to Revoke Probation.

13. On August 18, 2011, complainant issued the petition to revoke probation, alleging six violations of probation.

14. At hearing, Paragraph 20 of the petition to revoke probation was amended to allege as the factual basis for the Fourth Cause to revoke probation:

Respondent failed to submit to the Board and obtain approval of a monitoring plan for his work at the colleges.

THE FIRST, SECOND AND FOURTH CAUSES TO REVOKE PROBATION

15. Probation Condition 2 restricted respondent's employment on probation to a practice under the supervision of an optometrist or ophthalmologist as follows:

Petitioner is restricted from owning or operating his own optometry private practice. He is restricted to supervised employment by an optometrist or ophthalmologist whose license is in good standing and who has been approved by the Board or its designee prior to petitioner commencing employment.

16. Probation Condition 3 required respondent to report to the board any change in employment as follows:

Petitioner shall inform the board in writing of any change of *place of practice* and place of residence within fifteen (15) days.
(Emphasis added.)

Business and Professions Code section 3005 defines "place of practice," as used in the Optometry Practice Act, to mean "any location where optometry is practiced."

17. Probation Condition 5 required respondent to have a practice monitor. It provided:

Within 30 days of the effective date of this decision, petitioner shall submit to the board for its prior approval a monitoring plan in which petitioner shall be monitored by another optometrist,

who shall provide periodic reports to the Board. Petitioner shall bear any cost for such monitoring. If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board.

18. Respondent did not report to either of his probation monitors that he provided optometry services at community colleges while on probation. Respondent admits that he provided optometry services at Foothill College on January 25 and April 12, 2010; at College of San Mateo on February 8, 2010, March 29, 2010, July 12, 2010, October 6, 2010, and February 7, 2011; and at Canada College on March 1, 2010, November 22, 2010, and March 7, 2011.

Respondent was hired by the schools as an independent contractor, and he received compensation for his services in the form of a stipend. For example at Foothill College, respondent signed an independent contractor agreement, completed invoices for his services, was paid \$350 per day for his services, and provided a taxpayer identification number for "Advanced Optometric Eyecare" on a IRS form W-9. Respondent examined 10 to 18 students per day, and prescribed lens where appropriate. Respondent permitted students to obtain single correction lens for \$15 and some of the frames for \$40. (These were for frames that were either donated or purchased at reduced rates.) Respondent would charge more for lenses with more complicated corrections, and he would charge more for frames other than the ones which were donated or purchased by him at a reduced rate. Respondent handled all the money except a \$20 deposit, which the school collected for the examination. If the student purchased glasses, the \$20 was applied toward the cost of the glasses. If no glasses were purchased, the deposit was refunded. Respondent would make up the glasses at his office, and then deliver them to the school. If there were problems with the glasses, the students would come into the VisionOne offices and he would fix the problem there.

19. There is no question that respondent was practicing optometry while at the community colleges. As defined by the Optometry Practice Act, that work was included within respondent's "place of practice." (Bus. & Prof. Code, § 3005.) Probation Condition 3 required respondent to report any change of his place of practice to the board. Respondent's failure to advise the board of his employment at the community colleges constituted a violation of Probation Condition 3.

20. Respondent was not supervised by an optometrist or an ophthalmologist in the performance of these services. Respondent's unsupervised employment at the community colleges constituted a violation of Probation Condition 2.

21. Respondent's services were not monitored by his practice monitor. Respondent's unmonitored employment at the community colleges constituted a violation of Probation Condition 6. Respondent's testimony that he told Dr. DiMartino of these services was self-serving, and is not competent evidence that his employment at the community

colleges was monitored. It is noted that Dr. DiMartino did not mention these services in his May 2011 letter to the board president.

22. Probation Monitor Sieferman first learned of respondent's work at the community colleges through a complaint filed with the board by one of the community colleges. She opened an investigation with the Division of Investigation in May 2011. The investigation was conducted by Investigator Andrew Omahen.

23. Probation Monitor Sieferman and respondent met on May 27, 2011. Respondent admitted working at the community colleges at that time, but stated that he believed it was community service. Respondent believed that his work at the community colleges was community service because he had performed this type of service since a student at the School of Optometry at the University of California, Berkeley, in the early 1990's under the supervision of a professor. Respondent continued working with the professor after he graduated for some time. After the professor died in 2002, the professor's wife requested that respondent continue the work, which he did, until he surrendered his license.

24. It never occurred to respondent that his work at the community colleges was employment. He believed it was community service because he could have earned more money working for an optometrist, and because the glasses were provided to the students at such discounted rates. Respondent first learned there was a problem with his service at the schools in an interview with Investigator Omahen on May 14, 2011. Respondent scheduled a meeting to discuss this with his probation monitor in May, as he wanted her to hear from him about his conduct. Respondent returned the stipends he had earned from the schools.

THIRD AND FIFTH CAUSES FOR PROBATION REVOCATION

25. Probation Condition 5 required respondent to cooperate with the board's probation program as follows:

Petitioner shall comply with the Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice and patient records upon request of the Board or its agent.

26. Probation Condition 7 required respondent to maintain record of lens prescriptions he dispensed or administered as follows:

Petitioner shall maintain a record of all lens prescriptions that he dispensed or administered during his probation, showing all the following: 1) the name and address of the patient; 2) the date; 3) the price of the services and goods involved in the prescription; 4) the visual impairment identified for which the prescription was furnished. Petitioner shall keep these records

in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.

27. Investigator Omahen made an unannounced visit at Dr. Chin's offices on May 14, 2011. The investigator requested to review patient records. The patient records maintained by Dr. Chin were kept electronically, and made available for inspection. Respondent did not provide the patient records of the community college students. Respondent did not provide the investigator with a list of patients required to be maintained by Probation Condition 7.

28. A second meeting took place on May 25, 2011. At this meeting respondent provided a list of patients but the list did not include the community college students. Respondent subsequently provided an updated list which included most of the community college students, but it did not include students he examined on two days at Foothill College.

29. Respondent has provided varying accounts to Investigator Omahen and Monitor Siefertman and at hearing about whether he maintained records of the community college students. He testified that he did not maintain the records of the student patients at the community colleges, but rather he gave the records to the colleges at the end of each day for their keeping in the student health record. If the student needed glasses, he kept the record and returned it with the glasses to the school. He also stated that he kept some of the records, but they were kept in a box at Dr. Chin's office and he believes they were destroyed following a fire at the office.

30. Probation Condition 7 required respondent to maintain a record of lens prescriptions he dispensed or administered in a ledger form. Respondent did not maintain such a record while on probation, and did not create one until it was requested by Investigator Omahen. Respondent's conduct constituted a violation of Probation Condition 7.

31. Probation Condition 5 required respondent to cooperate with the board's probation program by providing patient records upon request. Respondent provided the records of patients he saw in Dr. Chin's office, but not those of all the community college students, stating that he had returned them to the community college for their safe keeping. Business and Professions Code section 3007, however, requires an optometrist to retain patient records for a minimum of seven years from the date he or she completes treatment of the patient. It is therefore found that respondent violated Probation Condition 5 by his inability to provide the patient records of the community college students upon the request of the board.

SIXTH CAUSE FOR PROBATION REVOCATION

32. Probation Condition 11 required respondent to provide proof to the board that he had made full restitution to Vision Service Plan. This condition provided:

Within 90 days of the effective date of this order, Petitioner shall submit to the board proof that he has made full restitution to VSP Vision Care.

33. As alleged in the accusation, a VSP audit of respondent's billings determined that respondent had inappropriately billed and received payment from VSP in the amount of \$84,829.53. As of the date of the petition for reinstatement, respondent had paid VSP \$75,460 in restitution. Under the terms of Probation Condition 11, respondent was to submit proof of payment of "full restitution" within 90 days of the effective date of the order granting his petition for reinstatement. The order became effective July 15, 2009. Respondent was thus required to submit proof of payment of the full amount of \$84,829.53 within three months of that date.

34. Respondent did not provide verification of payment of "full restitution" to VSP within 90 days July 15, 2009. In failing to do so, he violated Probation Condition 11.

35. Respondent eventually paid VSP a reduced amount of \$8,785.64 by check dated July 26, 2010, which was more than one year after the effective date of the board's decision. VSP accepted that amount as payment in full of the outstanding restitution amount by letter dated August 9, 2010.

36. Respondent explained his delay as a product of his request for information from VSP which would specify to him the amount he owed. Respondent believed that VSP had withheld money due him during his last six months of panel membership, and without knowing the amount that was withheld he felt he was unable to calculate what he owed VSP. Respondent made numerous requests to VSP for various documents, including "reconciliation statements" for the six-month period and copies of an audio recording and transcript of a December 2003 VSP hearing. According to Respondent, VSP did not respond to any of his inquiries.

On July 26, 2010, respondent requested Probation Monitor Sieferman to send him the amount due VSP. She contacted VSP and was advised by Thomas Jones that the amount owing was \$8,758.84. Respondent wrote a check for that amount that day.

LEGAL CONCLUSIONS

1. The standard of proof applied in this proceeding is clear and convincing evidence to a reasonable certainty.

2. Pursuant to Condition 12 of his probation to the board, respondent's may be revoked upon findings that he violated its terms and conditions.

3. By reason of the matters set forth in Factual Findings 15 through 21, it was established that respondent violated Conditions 2, 3 and 5, of his probation to the board in connection with his employment at the community colleges. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

4. By reason of the matters set forth in Factual Findings 25 through 31, it was established that respondent violated Conditions 5 and 7 of his probation to the board by failing to maintain a ledger of all lens prescriptions associated with his community college employment, and failing to make available all patient records. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

5. By reason of the matters set forth in Factual Findings 32 through 34, it was established that respondent violated Condition 11 of his probation to the board by reason of his failure to timely provide proof of payment of full restitution to VSP. Cause exists to revoke respondent's probation and to reimpose the stayed discipline (revocation) imposed in Case No. 2003-215.

Disciplinary Considerations

6. The question presented is whether respondent's probation should be extended as he requests, or whether his probation should be revoked as complainant requests.

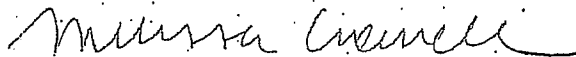
The probationary terms were developed by the board in order to ensure that respondent could practice optometry with safety to the public after having committing serious acts of unprofessional conduct as an optometrist. While all evidence in mitigation has been considered, it is concluded that respondent's lack of compliance with probation is for the most part unmitigated. While respondent believed that his work at the community colleges was community service, he failed to pose the question to his probation monitor with whom he had regular contact. The work was unmonitored and unsupervised, which is exactly what this board forbade under its order reinstating the license. Respondent's failure to maintain a ledger of his work at the community colleges made it impossible for it to be reviewed as well. Respondent was also ordered by this board to make full restitution to VSP in the amount of \$84,829.53 within three months of reinstating his license. Instead of complying with that order, respondent choose to quibble with VSP over the remaining amount of restitution he owed, saying that was his right. That was not his right, as the board's order regarding the amount of restitution he owed was a final order, and he had admitted the amount of restitution he owed VSP by virtue of petitioning for reinstatement. Lastly, respondent's inconsistent statements regarding the records of the community college patients raise questions about his candor.

The ultimate goal of licensing generally, and the highest priority of the board in exercising its disciplinary functions, is the protection of the public. (Bus. & Prof. Code, § 3010.1.) Probation is a serious matter, and the conditions of the board are meant to be strictly followed, not interpreted by probationers as it suits them. Respondent's overall performance on probation does little to install confidence that his performance on probation in the future would be different. For this reason, it is concluded that continuing respondent on probation would not be consistent with the public protection.

ORDER

The petition to revoke probation is granted, and probation is revoked. The stay of the revocation imposed in Case No. 2003-125 (Decision effective July 15, 2008) is lifted and the order of revocation of Optometrist License No. 10427 issued to respondent Gregory Lawrence Tom is imposed.

DATED: June 21, 2012



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Early
Termination of Probation for:

GREGORY TOM

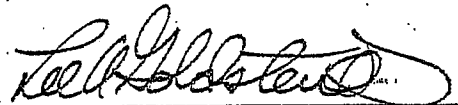
Optometrist License No. 10427

Case No. CC-2008-225

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition for Reconsideration, which has been filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied. Accordingly, the Decision shall remain effective.

IT IS SO ORDERED this 30th day of September, 2011.



1 KAMALA D. HARRIS
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2 FRANK H. PACOE
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3 CHAR SACHSON
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Attorneys for Complainant

7
8 BEFORE THE
STATE BOARD OF OPTOMETRY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Petition to Revoke
Probation Against

Case No. 2003-125

PETITION TO REVOKE PROBATION

12 GREGORY LAWRENCE TOM
13 DBA 20/20 OPTOMETRY
3191 Crow Canyon Place, Suite C
14 San Ramon, CA 94583

15 Optometry License No. 10427
Fictitious Name Permit No. 2081
16 Fictitious Name Permit No. 2155
Branch Office License No. 6275

17 Respondent.
18

19
20 Complainant alleges:

21 PARTIES

22 1. Mona Maggio (Complainant) brings this Petition to Revoke Probation solely in her
23 official capacity as the Executive Officer of the State Board of Optometry, Department of
24 Consumer Affairs.

25 2. On or about September 22, 1994, the State Board of Optometry issued Optometrist
26 License Number 10427 to Gregory L. Tom (Respondent). The Optometrist License was in effect
27 at all times relevant to the charges brought herein and will expire on July 31, 2012, unless
28 renewed.

1. 3. On or about January 13, 1995, the State Board of Optometry issued Fictitious Name
2 Permit Number 2081 to Gregory L. Tom (Respondent). The Fictitious Name Permit expired on
3 April 14, 2003, and has not been renewed.

4 4. On or about May 11, 1995, the State Board of Optometry issued Fictitious Name
5 Permit Number 2155 to Respondent. The Fictitious Name Permit expired on April 14, 2003, and
6 has not been renewed.

7 5. On or about June 15, 2001, the State Board of Optometry issued Branch Office
8 License Number 6275 to Respondent. The Branch Office License expired on February 1, 2004,
9 and has not been renewed.

10 6. In a disciplinary action entitled "In the Matter of the Accusation Against D.B.A.
11 20/20 Optometry, Gregory Lawrence Tom, Case No. 2003-125, Respondent surrendered his
12 Optometrist License. The surrender was effective April 3, 2008. On or about February 23, 2009,
13 Respondent petitioned to have his Optometrist License reinstated.

14 7. In a disciplinary action entitled "In the Matter of Petition for Reinstatement Against
15 Gregory L. Tom," Case No. 2003-125, the State Board of Optometry issued a decision, effective
16 July 15, 2009, in which Respondent's Optometrist License was reinstated, and immediately
17 revoked. However, the revocation was stayed and Respondent's Optometrist License was placed
18 on probation for a period of five (5) years with certain terms and conditions. A copy of that
19 decision is attached as Exhibit A and is incorporated by reference.

20 JURISDICTION.

21 8. This Petition to Revoke Probation is brought before the State Board of Optometry
22 (Board), Department of Consumer Affairs.

23 FIRST CAUSE TO REVOKE PROBATION

24 (Restricted Practice)

25 9. At all times after the effective date of Respondent's probation, Condition 2 stated:
26 "Restricted Practice: Petitioner is prohibited from owning or operating his own optometry
27 private practice. He is restricted to supervised employment by an optometrist or ophthalmologist
28

1. whose license is in good standing and who has been approved by the Board or its designee prior
2. to petitioner commencing employment."

3. 10. Respondent's probation is subject to revocation because he failed to comply with
4. Probation Condition 2, referenced above. The facts and circumstances regarding this violation
5. are as follows:

6. 11. On or about January 25, 2010 and April 12, 2010, Respondent provided optometry
7. services at Foothill College in Los Altos Hills, California. On or about February 8, 2010, March
8. 29, 2010, July 12, 2010, October 6, 2010, and February 7, 2011, Respondent provided optometry
9. services at College of San Mateo in San Mateo, California. On or about March 1, 2010,
10. November 22, 2010 and March 7, 2011, Respondent provided optometry services at Canada
11. College in Redwood City, California. On unknown dates, Respondent also provided optometry
12. services at City College of San Francisco in San Francisco, California. Respondent was not
13. supervised by a Board-approved optometrist or ophthalmologist as required by Condition 2, and
14. he received compensation for his services. Respondent saw between 10 and 18 students per day
15. while working at the schools.

16. SECOND CAUSE TO REVOKE PROBATION

17. (Reporting)

18. 12. At all times after the effective date of Respondent's probation, Condition 3 stated:

19. "Reporting: Petitioner shall inform the Board in writing of any change of place of practice
20. and place of residence within fifteen (15) days."

21. 13. Respondent's probation is subject to revocation because he failed to comply with
22. Probation Condition 3, referenced above. The facts and circumstances regarding this violation
23. are as follows:

24. 14. Respondent failed to inform the Board in writing that he practiced at Foothill College,
25. College of San Mateo, Canada College and San Francisco City College, as stated above in
26. paragraph 11.

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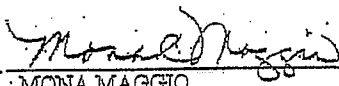
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1. Revoking the probation that was granted by the State Board of Optometry in Case No. 2003-125 and imposing the disciplinary order that was stayed thereby revoking Optometrist License No. 10427 issued to Gregory L. Tom;
2. Revoking or suspending Optometrist License No. 10427, issued to Gregory L. Tom;
3. Revoking or suspending Fictitious Name Permit No. 2081, issued to Gregory L. Tom;
4. Revoking or suspending Fictitious Name Permit No. 2155, issued to Gregory L. Tom;
5. Revoking or suspending Branch Office License No. 6275, issued to Gregory L. Tom;
6. Taking such other and further action as deemed necessary and proper.

DATED: 8/18/2011


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition
for Reduction of Penalty or Early
Termination of Probation of:

GREGORY TOM, O.D.,

Optometrist License No. 10427,

Petitioner.

OAH No. 2011060861

Agency Case No. CC2008-225

DECISION

A quorum of the Board of Optometry (Board) heard this matter on June 21, 2011, in Los Angeles, California. The members of the Board present were Lee A. Goldstein, O.D., President; Alejandro Arredondo, O.D., Vice President; Monica Johnson; Alexander Kim; Kenneth Lawenda, O.D.; and Fred Naranjo.

Board member Donna Burke was present, but did not participate in the hearing or deliberations; she recused herself from this matter.

Jessica Siefertman, the Board's Enforcement staff, was also present during the proceedings.

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings was present at the hearing and during the consideration of the case, in accordance with Government Code section 11517.

Gregory Tom, O.D., (Petitioner) represented himself.

Michelle McCarron, Deputy Attorney General, represented the Attorney General of the State of California, pursuant to Government Code Section 11522.

The parties submitted the matter for decision, and the Board decided the case in executive session on June 21, 2011.

FACTUAL FINDINGS

1. On or about November 19, 2010, Petitioner filed the Petition for Reduction of Penalty or Early Termination of Probation. Petitioner seeks the early termination of his five-year probation. He contends it is appropriate to end his probation early because he is sufficiently rehabilitated from the earlier transgressions he committed.

2. The California Attorney General contends the public would be unsafe if the Board were to reinstate Petitioner's license.

3. The Board issued optometrist license number 10427 to Petitioner on or about September 22, 1994.

4. In approximately March 2007, the California Attorney General's Office filed an accusation against Petitioner alleging that from 2001 through 2006, Petitioner fraudulently submitted bills to insurance provider Vision Services Plan totaling approximately \$80,000, and altered patient medical records.

5. In a Stipulated Surrender of License and Order, effective April 3, 2008, Petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and the alteration of medical records; he surrendered his optometrist license.

6. Petitioner filed a Petition for Reinstatement of his optometrist license on February 23, 2009. The Board considered his petition on May 15, 2009, and in a Decision, effective July 15, 2009, the Board agreed to grant his petition. The Board reinstated Petitioner's optometrist license, effective January 1, 2010, immediately revoked it, stayed the revocation, and placed the license on five years probation upon various terms and conditions.

7. Petitioner's probationary terms and conditions include, among others, being restricted to supervised employment by a Board-approved optometrist or ophthalmologist, prior to commencing employment (term and condition 2); and requiring Petitioner to inform the Board in writing of any change of place of practice within 15 days (term and condition 3).

8. Petitioner's probation continues until January 1, 2015.

9. Petitioner asserted that he has changed his mentality and learned about his mistakes during his time on probation. He described himself as a changed person who has been diligent, cooperative, and proactive with all of the Board's probationary requirements. He explained that, while he agrees he lost sight of the ethical line between what was best for his patients and what was best for the doctor, he never placed any patient at risk by his misconduct. He explained how his revocation and probation has caused him and his family financial and emotional hardship. He described his community service, including designing an educational course on the human eye for preschool and elementary school children and

working with the First Tee of Contra Costa County (a golf program for minors). Petitioner has continued his continuing education studies. He reads optometry articles on a regular basis. Petitioner was single when he engaged in misconduct. He is now married and is a father. He asserted that his family life has allowed him to mature.

10. Petitioner submitted letters of support, including letters from Russell Wong, Learning Disability Specialist, Foothill College, dated November 23, 2010; Braden C. Woods, dated November 26, 2010; Richard A. Tramor, Esq., dated November 29, 2010; Radbert Chin, O.D., dated November 18, 2010; and Claire Tom, Petitioner's wife, dated December 1, 2010. Each author generally described Petitioner as a good person who has learned from his mistakes, a hard worker, and someone who is deserving of practicing optometry without restrictions.

11. At a probation meeting in May 2011, Petitioner admitted that he has worked at three colleges between January 25 and 30, 2010. Petitioner asserted that he volunteered his services, but he was paid a stipend by the colleges and the student patients paid cash for their glasses. Petitioner contracted with the colleges under the business name of "Advanced Optometric Eyecare." According to the California Secretary of State, Advanced Optometric Eyecare is an active business with Petitioner as the agent for service. Petitioner used the tax identification number for this entity when contracting with the three colleges. His stipend ranged from approximately \$315 to \$350 for each day. Petitioner did not notify the Board before engaging in this work. He was not supervised by another optometrist. These activities by Petitioner violated Terms and Conditions numbers 2 and 3 of his current probation. Petitioner explained that once he understood this was a violation of his probation, he issued personal checks to each college paying amounts greater than what he was paid. On each check, Petitioner wrote, "donation." This notation gave the Board concern that Petitioner sought to use these reimbursements as personal tax benefits, although when asked at hearing, Petitioner asserted he would not do so.

12. The Board approved Petitioner's probation monitor, Robert B. DiMartino, O.D., as of August 2010. DiMartino, however, has issued only one probation monitor report, in the form of a brief letter, dated May 15, 2011. In that report, DiMartino describes his monitor responsibility as "mentor[ing]." There is no evidence that DiMartino has reviewed any of Petitioner's patient files during his probation monitoring.

LEGAL CONCLUSIONS

1. Cause exists to deny Petitioner's Petition for Reduction of Penalty or Early Termination of Probation, pursuant to Business and Professions Code section 11522, as set forth in Factual Findings 1-12, and Legal Conclusions 2-6.

2. Petitioner bears the burden to prove, by clear and convincing evidence to a reasonable certainty, that the Board should grant his petition. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316.)

3. Government Code section 11522 states in pertinent part:

A person whose license has been revoked or suspended may petition the agency for reinstatement . . . after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

4. California Code of Regulations, title 16, section 1516, states in pertinent part:

[9] . . . [9]

(b) When considering the suspension or revocation of a certificate of registration on the grounds that the registrant has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

(c) When considering a petition for reinstatement of a certificate of registration under Section 11522 of the Government Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria of rehabilitation specified in subsection (b).

5. Petitioner did not prove, by clear and convincing evidence to a reasonable certainty, that the early termination of probation is warranted. Petitioner violated two conditions of probation (terms and conditions 2 and 3) by accepting stipends in exchange for


his optometry services and failing to inform the Board of these actions. While he returned those stipends to each college, he did so only after being confronted by an investigator from the Division of Investigations about the services Petitioner provided to those colleges. Further, and despite his assertion to the contrary, his notation of "donation" on each of his checks gives the Board suspicion that Petitioner intended (at least initially) to use these payments as personal tax benefits. Separate from these actions, Petitioner failed to provide persuasive evidence of rehabilitation.

6. Petitioner's original misconduct was serious and warrants the current probation period to protect the public. With insufficient evidence of rehabilitation to merit an early end to his probation, the Petition should be denied.

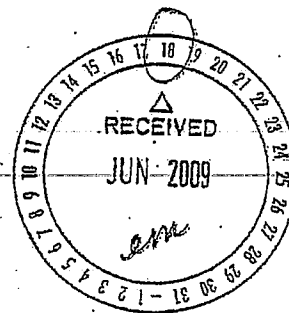
ORDER

Gregory Tom's Petition for Early Termination of Probation is denied.

Dated: August 16, 2011


Lee A. Goldstein, O.D., President
California Board of Optometry

BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



In the Matter of the Petition for
Reinstatement of:

GREGORY LAWRENCE TOM, O.D.

Optometry License No. 10427

Respondent.

Case No. 2003-125

OAH No. 2009040794

DECISION

The attached Decision of the Administrative Law Judge is hereby adopted by the Board of Optometry, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective July 15, 2009.

It is so ORDERED June 15, 2009

LEE A. GOLDSTEIN, O.D. MPA
PRESIDENT
BOARD OF OPTOMETRY

**BEFORE THE
BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement of:

GREGORY LAWRENCE TOM, O.D.,
Optometry License No. 10427

Petitioner.

Case No. 2003-125

OAH No. 2009040794

DECISION

This matter was heard by a quorum of the Board of Optometry (Board) on May 15, 2009, in Fullerton, California. Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, State of California, presided. Board members present and participating were Lee A. Goldstein, O.D., President; Alejandro Arredondo, O.D.; Martha Burnett-Collins, O.D.; Monica Johnson; Kenneth Lawenda, O.D.; Fred Naranjo; Edward J. Rendon, M.P.A.; and Susy Yu, O.D.

The record was closed and the matter was submitted for decision. Thereafter, the Board met in an executive session and decided the matter on the day of the hearing.

Gregory Lawrence Tom (petitioner) represented himself.

Erin Sunseri, Deputy Attorney General, California Department of Justice, appeared pursuant to Government Code section 11522.

FACTUAL FINDINGS

1. On or about September 22, 1994, the Board issued Optometry License Number 10427 to petitioner.

2. a. The Board, by Decision and Order effective April 3, 2008, in Case No. 2003-125, adopted a Stipulated Settlement and Disciplinary Order resolving an accusation that had been brought against petitioner.

b. In the Stipulated Surrender of License and Order, petitioner agreed that there was a factual basis for discipline against his license for unprofessional conduct with regard to insurance fraud and alteration of medical records. The facts underlying the

accusation are that from 2001 through 2006, petitioner fraudulently submitted bills to insurance provider Vision Services Plan (VSP), totaling approximately \$80,000. Petitioner also committed unprofessional conduct by altering his patients' medical records.

c. Pursuant to the Stipulated Surrender of License and Order, paragraph 22, Petitioner agreed to pay the Board its costs of investigation and enforcement in the amount of \$11,284.57, prior to the issuance of a new or reinstated license.

3. a. Pursuant to the Order, petitioner surrendered his license. Petitioner agreed not to petition the Board for reinstatement until one year from the effective date of the Decision and Order; i.e., until April 3, 2009.

b. Petitioner filed the instant petition for reinstatement on February 23, 2009. Although he filed the petition more than one month prior to the earliest agreed upon application date, the Board decided to consider it.

4. Petitioner contends his license should be reinstated because he admitted and accepted responsibility for his wrongful conduct. Petitioner acknowledged that he should not have substituted his own judgment for the insurance company rules. He grasped the gravity of his actions, and recognized how he harmed others. Petitioner believes that he has learned a painful lesson, and he is willing to comply with whatever guidelines the Board deems necessary.

5. Since petitioner surrendered his license, he has worked in the bank industry and has volunteered at a local preschool. Petitioner has completed 63 continuing education hours, and has studied various optometric literature. He also took an ethics class through the Department of Real Estate. In addition, petitioner paid \$75,460 restitution to VSP.

6. Petitioner submitted multiple references supporting his petition, including a letter from Robert DiMartino, O.D., Professor of Clinical Optometry at University of California, Berkeley. Dr. DiMartino highlighted petitioner's intellect and talent. He noted that although petitioner's actions demonstrated a lack of judgment, he has the capacity to learn from his error. Dr. DiMartino stated that petitioner's expertise was a great loss to the public, and that ongoing audits would best protect the public.

7. Petitioner's wife, Claire Syn Tom, testified in support of his reinstatement. She reiterated how difficult it has been for petitioner, and their family, to lose his license. Subsequent to the surrender, Mrs. Tom has noticed that petitioner's behavior has changed in numerous ways; for example, before his license was revoked, he focused primarily on his practice, and now he devotes himself to their family. In addition, Mrs. Tom has observed that petitioner has accepted responsibility for his actions, and he possesses more integrity than before this occurred.

LEGAL CONCLUSIONS

1. Cause exists to grant petitioner's petition for reinstatement, pursuant to Business and Professions Code section 11522, as set forth in factual findings 1-7 and legal conclusions 2-4.

2. Petitioner bears the burden to prove, by clear and convincing evidence, that he is sufficiently rehabilitated and entitled to reinstatement. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092.)

3. California Code of Regulations, title 16, section 1516 provides that the following rehabilitation criteria may be evaluated when considering a petition for reinstatement: (1) the nature and severity of the act(s) or crime(s) under consideration as grounds for denial; (2) evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code; (3) the time that has elapsed since commission of the act(s) or crime(s); (4) the extent to which the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant; and (5) rehabilitation evidence.

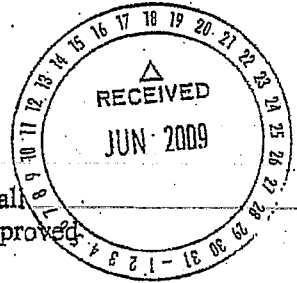
4. Petitioner has demonstrated sufficient rehabilitation to warrant his reinstatement on probationary terms. Petitioner showed a sincere change in attitude and acceptance of responsibility. He submitted evidence of partial restitution. Because of his experience and family support, similar misconduct is not likely to be repeated. The evidence also showed that the public would benefit from Petitioner's medical talent. Conversely, Petitioner committed serious misconduct by defrauding insurance provider VSP and altering his patients' medical records, and only one year has passed since the effective date of petitioner's license surrender. Because of the relatively short period of time since the conduct and the surrender of his license, petitioner must wait an additional period of time before the license is actually reinstated. Given the forgoing, the following order adequately protects the public interest while acknowledging petitioner's rehabilitation efforts.

ORDER

Gregory Tom's petition for reinstatement is granted and his certificate of registration to practice optometry shall be reinstated, effective January 1, 2010. The certificate shall be immediately revoked, provided that the revocation shall be stayed, and the certificate shall be placed on probation for five (5) years, upon the following terms and conditions:

1. Obey All Laws: Petitioner shall obey all federal, state and local laws, and all rules governing the practice of optometry in California.

2. Restricted Practice: Petitioner is prohibited from owning or operating his own optometry private practice. He is restricted to supervised employment by an optometrist or ophthalmologist whose license is in good standing and who has been approved by the Board or its designee prior to petitioner commencing employment.
3. Reporting: Petitioner shall inform the Board in writing of any change of place of practice and place of residence within fifteen (15) days.
4. Residency of Practice: The period of probation shall not run during the time petitioner is residing or practicing outside the jurisdiction of California. If, during probation, petitioner moves out of the jurisdiction of California to reside or practice elsewhere, petitioner is required to immediately notify the Board in writing of the date of departure, and the date of return, if any.
5. Cooperate with Probation Surveillance: Petitioner shall comply with the Board's probation surveillance program, including but not limited to allowing access to the probationer's optometric practice and patient records upon request of the Board or its agent.
6. Monitoring: Within 30 days of the effective date of this decision, petitioner shall submit to the Board for its prior approval a monitoring plan in which petitioner shall be monitored by another optometrist, who shall provide periodic reports to the board. Petitioner shall bear any cost for such monitoring. If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by petitioner and approval by the board.
7. Maintain Records: Petitioner shall maintain a record of all lens prescriptions that he dispensed or administered during his probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the price of the services and goods involved in the prescription, and 4) the visual impairment identified for which the prescription was furnished. Petitioner shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the board or its designee, upon request.
8. Education Coursework: Within 90 days of the effective date of this decision, and on an annual basis thereafter, petitioner shall submit to the board for its prior approval an educational program or course to be designated by the board, which shall not be less than 40 hours per year, for each year of probation. This program must include at least eight hours of ethics course(s); and the program shall be in addition to the Continuing Optometric Education requirements for re-licensure. Petitioner shall bear all associated costs. Following the completion of each course, the Board or its designee may administer an

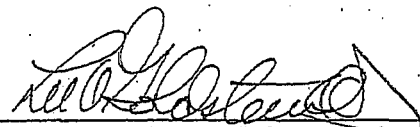


examination to test petitioner's knowledge of the course. Petitioner shall provide written proof of attendance in such course or courses as are approved by the board.

9. Community Service: Within 60 days of the effective date of this decision Petitioner shall submit to the Board, for its approval, a plan for community service, according to which he shall provide free services on a regular basis to an underserved community or charitable facility or agency for at least 10 hours a month, for the first 24 months of probation. Once a year Petitioner shall provide the Board with proof that he has complied with the plan.
10. Payment of Costs: Petitioner must pay to the Board the full amount of the unpaid costs assessed against him, as he agreed in the Stipulated Surrender and Order, totaling \$11,284.57. This amount is payable in equal monthly installments during the period of probation, provided that the full amount shall be paid 90 days prior to completion of probation. Petitioner shall commence making payments upon notification by the Board or its designee of the amount of unpaid costs, the monthly installment amount, and the payment schedule. A failure to make timely payments pursuant to the payment schedule shall constitute a violation of probation, although petitioner is free to pay the costs earlier than prescribed in the schedule. If petitioner has not paid the full amount of costs at the end of the five-year period of probation, his probation shall be extended until full payment has been made.
11. Restitution: Within 90 days of the effective date of this order, Petitioner shall submit to the Board proof that he has made full restitution to VSP Vision Care.
12. Violation of Probation: If petitioner violates probation in any respect, the Board, after giving him notice and an opportunity to be heard, may terminate probation and impose the stayed discipline, or such discipline as it deems appropriate. If an accusation or petition to revoke probation is filed against petitioner during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final.
13. Completion of Probation: Upon successful completion of probation, petitioner's certificate will be fully restored.

IT IS SO ORDERED.

Dated: June 15, 2009


LEE A. GOLDSTEIN, O.D., President
Board of Optometry
Department of Consumer Affairs
State of California

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2003-125

D.B.A. 20/20 OPTOMETRY
GREGORY LAWRENCE TOM
3191 Crow Canyon Place, Suite C
San Ramon, CA 94583

Optometry License No. 10427
Fictitious Name Permit No. 2081
Fictitious Name Permit No. 2155
Branch Office License No. 6275
Statement of Licensure Cert. No. 5181

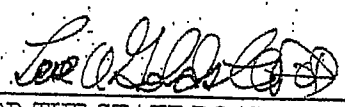
Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the
State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 3, 2008

It is so ORDERED March 3, 2008



FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

EDMUND G. BROWN JR., Attorney General
of the State of California

WILBERT E. BENNETT

Supervising Deputy Attorney General

DIANN SOKOLOFF, State Bar No. 161082

Deputy Attorney General

California Department of Justice

1515 Clay Street, 20th Floor

P.O. Box 70550

Oakland, CA 94612-0550

Telephone: (510) 622-2212

Facsimile: (510) 622-2270

Attorneys for Complainant

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 2003-125

GREGORY LAWRENCE TOM
D.B.A. 20/20 OPTOMETRY
3191 Crow Canyon Place, Suite C
San Ramon, CA 94583

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

Optometry License No. 10427
Fictitious Name Permit No. 2081
Fictitious Name Permit No. 2155
Branch Office License No. 6275
Statement of Licensure Cert. No. 5181

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties in
this proceeding that the following matters are true:

PARTIES

1. Taryn Smith (Complainant) is the Executive Officer of the State Board of
Optometry. She brought this action solely in her official capacity and is represented in this

matter by Edmund G. Brown Jr., Attorney General of the State of California, and by Diann Sokoloff, Deputy Attorney General.

2. Gregory Lawrence Tom (Respondent) is represented in this proceeding by attorney Richard Tamor, whose address is 1901 Harrison Street, 9th Floor, Oakland, CA 94612.

3. On or about September 22, 1994, the State Board of Optometry issued Optometry License No. 10427 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 2003-125 and will expire on July 31, 2008, unless renewed.

4. On or about December 12, 2006, the State Board of Optometry issued a Statement of Licensure Certificate No. 5181 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The license was in full force and effect and at all times relevant to the charges brought in Accusation No. 2003-125 and will expire on July 31, 2008, unless renewed.

5. On or about January 13, 1995, the State Board of Optometry issued Fictitious Name Permit No. 2081 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on April 14, 2003, and has not been renewed.

6. On or about May 11, 1995, the State Board of Optometry issued Fictitious Name Permit No. 2155 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on April 14, 2003, and has not been renewed.

7. On or about June 15, 2001, the State Board of Optometry issued Branch Office License No. 6275 to Gregory Lawrence Tom, doing business as 20/20 Optometry. The Permit expired on February 1, 2004, and has not been renewed.

JURISDICTION

8. Accusation No. 2003-125 was filed before the State Board of Optometry (Board), Department of Consumer Affairs, and is currently pending against Respondent. The

Accusation and all other statutorily required documents were properly served on Respondent on March 26, 2007. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2003-125 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

9. Respondent has carefully read, discussed with counsel, and fully understands the charges and allegations in Accusation No. 2003-125. Respondent also has carefully read, discussed with counsel, and fully understands the effects of this Stipulated Surrender of License and Order.

10. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

11. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

12. Respondent, without making specific admissions, stipulates that there is a factual basis for imposition of discipline and agrees that cause exists for discipline based on the allegations in Accusation No. 2003-125, and hereby surrenders his Optometry License No. 10427 for the Board's formal acceptance.

13. Respondent without making specific admissions, stipulates that there is a factual basis for imposition of discipline and agrees that cause exists for discipline based on the

allegations in Accusation No. 2003-125, and hereby surrenders his Statement of Licensure Certificate No. 5181 for the Board's formal acceptance.

14. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Optometry License and Statement of Licensure Certificate without further process.

CONTINGENCY

15. This stipulation shall be subject to approval by the State Board of Optometry. Respondent understands and agrees that counsel for Complainant and the staff of the State Board of Optometry may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

OTHER MATTERS

16. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

17. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that the surrender of Optometry License No. 10427, and Statement of Licensure Certificate No. 5181 issued to Respondent Gregory Lawrence Tom, doing business as 20/20 Optometry, is accepted by the State Board of Optometry.

18. The surrender of Respondent's Optometry License and Statement of Licensure Certificate, and the acceptance of the surrendered license, permits, and certificate by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

19. Respondent shall lose all rights and privileges as an optometrist in California as of the effective date of the Board's Decision and Order.

20. Respondent shall cause to be delivered to the Board his Optometry License No. 10427, his Statement of Licensure Certificate No. 5181, and his wall and pocket license certificates on or before the effective date of the Decision and Order.

21. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2003-125 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

22. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$11,284.57 prior to issuance of a new or reinstated license.

23. Respondent shall not apply for licensure or petition for reinstatement for one year from the effective date of the Board's Decision and Order.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Richard Tamor. I understand the stipulation and the affect it will have on my Optometry License, Fictitious Name Permits, and Branch Office License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the State Board of Optometry.

DATED: 12/17/07


GREGORY LAWRENCE TOM
Respondent

I have read and fully discussed with Respondent Gregory Lawrence Tom the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 12/16/07


RICHARD TAMOR
Attorney for Respondent

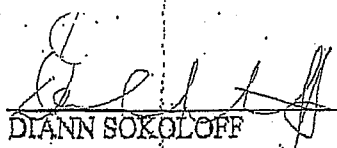
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully
submitted for consideration by the State Board of Optometry of the Department of Consumer
Affairs.

DATED: 12/20/07

EDMUND G. BROWN JR., Attorney General
of the State of California

WILBERT E. BENNETT
Supervising Deputy Attorney General


DIANN SOKOLOFF
Deputy Attorney General

Attorneys for Complainant.

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 WILBERT E. BENNETT

Supervising Deputy Attorney General

3 DIANN SOKOLOFF, State Bar No. 161082

Deputy Attorney General

4 California Department of Justice

1515 Clay Street, 20th Floor

5 P.O. Box 70550

Oakland, CA 94612-0550

6 Telephone: (510) 622-2212

Facsimile: (510) 622-2270

7 Attorneys for Complainant

8

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BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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In the Matter of the Accusation Against:

Case No.

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GREGORY LAWRENCE TOM

DBA 20/20 OPTOMETRY

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3191 Crow Canyon Place, Suite C

San Ramon, CA 94583

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Optometry License No. 10427

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Fictitious Name Permit No. 2155

Fictitious Name Permit Number 2081

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Branch Office License Number 6275

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Respondent.

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Complainant alleges:

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PARTIES

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1. Taryn Smith (Complainant) brings this Accusation solely in her official

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capacity as the Executive Officer of the State Board of Optometry, Department of Consumer

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Affairs.

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2. On or about September 22, 1994, the State Board of Optometry issued

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Optometry License Number 10427 to Gregory Lawrence Tom (Respondent). The Optometry

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License was in full force and effect at all times relevant to the charges brought herein and will

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expire on July 31, 2008, unless renewed.

1 3. On or about January 13, 1995, the State Board of Optometry issued
2 Fictitious Name Permit Number 2081 to Gregory Lawrence Tom, DBA 20/20 Optometry
3 (Respondent). The Fictitious Name Permit expired on April 14, 2003, and has not been renewed.

4 4. On or about May 11, 1995, the State Board of Optometry issued Fictitious
5 Name Permit Number 2155 to Gregory Lawrence Tom, DBA 20/20 Optometry (Respondent).
6 The Fictitious Name Permit expired on April 14, 2003, and has not been renewed.

7 5. On or about June 15, 2001, the State Board of Optometry issued Branch
8 Office License Number 6275 to Gregory Lawrence Tom, DBA 20/20 Optometry (Respondent).
9 The Branch Office License expired on February 1, 2004, and has not been renewed.

10 JURISDICTION

11 6. This Accusation is brought before the State Board of Optometry (Board),
12 Department of Consumer Affairs, under the authority of the following laws. All section
13 references are to the Business and Professions Code unless otherwise indicated.

14 7. Section 125.3 of the Code provides, in pertinent part, that the Board may
15 request the administrative law judge to direct a licensee found to have committed a violation or
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
17 and enforcement of the case.

18 8. Section 3105 of the Code states: "Altering or modifying the medical
19 record of any person, with fraudulent intent, or creating any false medical record, with fraudulent
20 intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State
21 Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of
22 this section."

23 9. Section 3106 of the Code states: "Knowingly making or signing any
24 certificate or other document directly or indirectly related to the practice of optometry that falsely
25 represents the existence or nonexistence of a state of facts constitutes unprofessional conduct."

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10. Section 3110 of the Code states:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

"(d) Incompetence.

"(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

"(f) Any action or conduct that would have warranted the denial of a license.

"(g) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients.

11. Section 810 of the Code states:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

"(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Insurance Fraud)

12. Respondent is subject to disciplinary action under sections 810(a)(1) and 810(a)(2), in conjunction with section 3110, in that between March 23, 2002 and June, 2003, respondent fraudulently submitted bills to Vision Service Plan (VSP).

13. VSP conducted an audit of respondent's San Ramon and San Jose offices on July 28-29, 2003. A sample of respondent's insurance claims were selected and reviewed. Fifty-five (55) claims from both his San Jose and his San Ramon offices were audited. The audit disclosed that thirty seven (37) claims or 67% of the claims that were reviewed from his San Jose office, and forty-four (44) claims or 80% of the claims reviewed from his San Ramon office were billed inappropriately or could not be substantiated because the patient record could not be located. The audit further found that inappropriate billing patterns were also found to have occurred with some of the same patients' services from previous years dating back to 2001 and 2002. As a result of the audit, VSP terminated respondent from membership status on October 24, 2003, and determined that the amount improperly paid to respondent by VSP was \$84,829.53. In general, the audit revealed the following inappropriate billing patterns: (1) billing for medically necessary contact lenses when none were provided; (2) providing prescription lenses for use without contact lenses when authorization was given only for spectacle lenses for use over contact lenses; (3) providing plano gray-3 lenses when a prescription lens was ordered and billed to VSP; (4) inflating amounts billed to VSP for medically necessary contact lenses, and (5) committing other infractions, including double billing for medically necessary contact lenses, double billing insurance plans, switching dates of service, changing patients' dates of birth to support billing, billing an intermediate exam for a comprehensive exam, inflating the wholesale frame costs, overcharging patients for options, and billing plano sunglasses as frame only.

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1 14. Respondent's fraudulent billing submissions to VSP included the
2 following:

3 a. In some cases (patients 5, 14, 15, 32, 49, and 51) the VSP materials and
4 Interim Benefits Pre-Certification Request Forms (Pre-Cert) for medically necessary contact
5 lenses (MNCL) i.e., contact lenses that are required by the patient as defined by VSP and do not
6 include elective, cosmetic contact lenses, were filled out for patients using + cylinder formats for
7 the Spectacle Rx (prescription), when the patient record showed - cylinder format on the
8 examination findings. The cylinder on the Pre-Cert Forms was not marked + or -; this often
9 made it appear that there was a significant change in the patient's Rx when that was not true.
10 Pre-Cert Forms were filled out with a different spectacle Rx than that which was documented on
11 the patient's record.

12 b. In one case (patient 28), MNCL were pre-certified by VSP but the Patient
13 Survey (the survey sent by VSP to patients who have received services and materials under VSP
14 plans, and filled out by the patients and returned to VSP) stated that he/she did not wear or
15 receive contact lenses. (Respondent billed VSP for these services and he was paid the maximum
16 allowance under the coverage.)

17 c. In some cases (patients 15, 23, 25, 49 and 50), VSP was routinely billed for
18 spectacle lenses to be worn on top of the MNCL. Respondent provided prescription lenses for
19 use without contact lenses when authorization was given only for spectacle lenses with use over
20 contacts. The Rx of these lenses was routinely a +0.50 D for each eye. There was no apparent
21 therapeutic objective for these Rx's. The Rx's were given without any documentation on the
22 patient record of near-point testing to establish a need for this type of help; it appeared to be done
23 solely for the purpose of inflating the VSP billing.

24 d. In some cases (patients 1, 3, 10, 17, 20, 21, 28, 29, 41, 53, 55 and 58), children
25 as young as 18 months were given Rx's for glasses when the findings were unreliable - as would
26 be expected at that age. The resulting Rx given to the children, and billed to VSP, were not
27 therapeutically significant; the documented examination findings did not establish any need for
28 the correction.

1 e. In some cases (patients 57 and 58), where spectacle lenses for use over contact
2 lenses and spectacle lenses for young children were prescribed, and billed to VSP, the VSP
3 Patient Surveys that were filled out by the patients or their parents showed that no lenses were
4 supplied to the patient by Dr. Tom's office.

5 f. In some cases (patients 10, 17, 21, 21, 29, 33, 36, 41, 46, 48), where spectacle
6 lenses for use over MNCL and spectacle lenses for young children were prescribed, the VSP
7 Patient Surveys that were filled out by the patients or their parents showed that non-prescription
8 sunglasses were supplied to the patient instead of the Rx lenses billed to VSP.

9 g. In some cases (patients 1, 3, 4, 10, 17, 20, 21, 48 and 62), the documentation
10 on the "Laboratory Instructions" part of the spectacle lens orders instructed the laboratory to ship
11 plano (non-prescription) sunlenses (Gray 3 planes) to Dr. Tom's office instead of the Rx
12 spectacle lenses specified on the billings to VSP for that patient.

13 h. In some cases (patients 4, 5, 7, 10, 17, 20, 21, 26, 29, 30, 33, 38, 41, 46, 48, 50,
14 60, 61 and 62), the billings to VSP routinely stated that dilation of the patient was performed on
15 almost every patient, but inspection of the individual patient records reviewed showed that
16 nineteen of those patients did not receive a dilated examination.

17 i. In one case (patient 24), Dr. Tom's office billed VSP for MNCL and spectacle
18 lenses for use over the contacts. The patient had Lasik surgery 18 months before the billing took
19 place; Dr. Tom was the co-managing optometrist on the surgery and filled out forms
20 documenting that the patient had 20/20 acuity without Rx 12 months before his office executed
21 the billing in question to VSP.

22 j. In some cases (patients 3 and 60), the Rx on VSP Doctor Service Report (IDC)
23 was not supported by the patient record.

24 15. Incorporating by reference the allegations in paragraphs 12 through 14,
25 respondent's conduct in knowingly presenting false and fraudulent claims to VSP for payment
26 constitutes unprofessional conduct within the meaning of Code sections 810 (a)(1) and 810(a)(2)
27 and provides grounds for disciplinary action under Code section 3110.

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1 3. Revoking or suspending Fictitious Name Permit Number 2081, issued to
2 Gregory Lawrence Tom, DBA 20/20 Optometry.

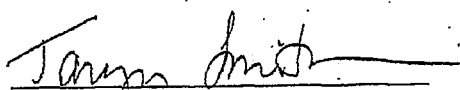
3 4. Revoking or suspending Branch Office License Number 6275, issued to
4 Gregory Lawrence Tom, DBA 20/20 Optometry.

5 5. Ordering Gregory Lawrence Tom to pay the State Board of Optometry a
6 civil penalty of five hundred dollars (\$500) for a violation of Code section 3105.

7 6. Ordering Gregory Lawrence Tom to pay the State Board of Optometry the
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
9 Professions Code section 125.3;

10 7. Taking such other and further action as deemed necessary and proper.
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14 DATED: 3/26/67
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18 TARYN SMITH
19 Executive Officer
20 State Board of Optometry
21 Department of Consumer Affairs
22 State of California
23 Complainant
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